Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

WILLIAM CRAIG, III,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether this Court should review the Seventh Circuit's decision, which directly conflicts with other circuits, holding that exigent circumstances justified a warrantless intrusion into the defendant's home where the suspect was unaware of the police surveillance;

(2) Whether this Court should review the Seventh Circuit's decision sanctioning the district court's material expansion of the concept of probable cause to include cases where there exists only subjective suspicion on the part of police; and

(3) Whether this Court should review the Seventh Circuit's decision sanctioning the district court's material expansion of the doctrine of inevitable discovery to include cases where:

(a) there is no nexus between the location searched and the evidence sought, and

(b) the officers have failed to make any attempt to obtain a lawful warrant.

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PETITION FOR WRIT OF CERTIORARI

William Craig III respectfully petitions this Court to issue a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit in *United States v. Craig*, No. 93-1761 (December 2, 1993). In *Craig*, in direct conflict with other United States courts of appeals, the Seventh Circuit found exigent circumstances to exist to justify a warrantless arrest despite the absence of any reasonable belief on the part of the officers that Craig either knew or would learn at any moment that he was under surveillance. Second, the court held that officers had probable cause to arrest Craig based solely upon the officers' suspicions arising from the location of the shooting and the fact that Craig had had a verbal confrontation with the victim earlier that day. This finding of probable cause greatly expands the concept of

probable cause as set forth and followed by federal courts. Finally, through an expansion of the doctrine of inevitable discovery, the court held evidence was admissible because the officers could have obtained a proper search warrant to search Craig's vehicle and his home. The court made this finding (1) despite the lack of a nexus between the location searched and the evidence being searched for and (2) without the officers having made any attempt whatsoever to obtain a lawful warrant.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is unpublished. A copy of the opinion is attached as part of the Appendix to this Petition. (App. 1) Also included in the Appendix is a copy of the Report and Recommendation written by a Magistrate Judge of the United States District Court for the Northern District of Illinois relating to the points raised in this Petition. (App. 3)

STATEMENT OF JURISDICTION

The jurisdiction of the district court was invoked by the United Statues pursuant to 18 U.S.C. § 3231. Specifically, defendant William Craig III was charged in a three-count indictment with three violations of federal law: 18 U.S.C. § 111 (assault on a United States Postal Service employee with a deadly weapon): 18 U.S.C. § 924(c) (use of a firearm in connection with a crime of violence): and 18 U.S.C. § 1114 (attempted murder of a United States Postal Service employee).

Defendant William Craig III filed his timely Notice of Appeal on March 26, 1993, from the district court's final judgment in this matter entered on March 18, 1993. The

United States Court of Appeals for the Seventh Circuit had jurisdiction pursuant to 28 U.S.C. § 1291.

This Court has jurisdiction to review the decision of the court of appeals by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF CASE

On March 5, 1992, William Craig III was employed by the United States Postal Service at the South Suburban Postal Facility ("the Facility") located in Bedford Park, Illinois (R.1). On that same day, a fellow employee of Craig's, Sheila Morrow, was shot and wounded as she left her office at the Facility (R.35).

A. Actions of Law Enforcement Officers

Richard Melton, the Facility's controller, was immediately notified of the occurrence (R.35). Melton promptly informed the Chicago Postal Inspection Department (R.29, Ex. A at 2). Melton told the Chicago inspectors that he believed Craig was a suspect in the assault (R.29, Ex. A at 2).

The postal inspectors in Chicago contacted Postal Inspector R.D. Ligon in Indiana (R.35; R.29, Ex. A at 3). Ligon was told that Craig was a possible suspect in a shooting that had occurred earlier that day in the Facility and that he was believed to be on his way home to Merrillville, Indiana (R.35; R.29, Ex. A at 3-4). Craig's address was given to Ligon (R.35; R.29, Ex. A at 3), who passed it on to the Merrillville Police Department (R.29, Ex. A at 4).

Ligon drove to Craig's home where he was met by Sergeant DeHaven of the Merrillville Police Department

(R.35 at 4; R.29, Ex. A at 4). DeHaven told Ligon that Craig's home was under surveillance by several unmarked police cars (R.35; R.29, Ex. A at 5).

Shortly thereafter, Craig drove down the street and into his driveway (R.35; R.29, Ex. A at 5). From his vehicle, Craig opened the door to his garage, which was attached to his home, using an electric garage door opener (R.29, Ex. A at 5). Craig pulled up the driveway, into the garage, and again using the electric opener, closed the garage door behind him (R.29, Ex. A at 5). Craig was unaware of the presence of law enforcement personnel (R.35).

As the door came down, Ligon and several Merrillville police officers ran toward Craig's garage (R.35; R.29, Ex. A at 5). Ligon grabbed the door, ripped the door off its metal track and forced the door back up (R.35). The police entered Craig's garage with their weapons drawn and ordered him at gunpoint out of his vehicle and on to the floor of the garage (R.88 at 4). No warrant authorizing either a search or arrest had been obtained or even sought by law enforcement (R.82 at 25).

After questioning the defendant, the officers searched Craig's vehicle and located a gun inside the vehicle (R.29, Ex. A at 6). Craig was taken to the police station, where he was interrogated (R.29, Ex. A at 6-7). During this custodial interrogation, Craig made oral and written statements to the police (R.22 at 21).

B. Knowledge of Law Enforcement Officers

Morrow did not see who had shot her (R.35). In fact, no one was able to tell law enforcement personnel who shot her (R.82 at 32). Additionally, no one had seen anyone in the area from which the shot came (R.22 at 53-55).

The Chicago inspectors were aware that the Facility normally had limited access, but that the access was not limited on this day due to construction work being done at the Facility (R.22 at 53-55). The inspectors were aware that construction workers had been given access to the Facility and that security measures had been reduced (R.22 at 53-55).

Melton informed the Chicago inspectors that Morrow had had a verbal confrontation earlier that morning with Craig, whom they were told was also a postal employee at the Facility (R.35).[1] Melton additionally told inspectors that he believed Craig was a suspect in the shooting (R.35).

Chicago postal inspectors recognized Craig's name and recalled that postal authorities had received a letter from Craig earlier that year (R.35). Craig had become concerned about the lack of security in the Facility's employee parking lot and had written to the postal authorities to share his concern (R.35). The letter concluded by stating:

> I feel if something is not done about this, violence will be eventual. This we must avoid. Will you please look into this? (R.35)

C. District Court's Ruling on the Motion to Suppress

Craig was charged with attempted murder of a postal employee by means of a deadly weapon (R.13). Craig moved to suppress the evidence obtained following his arrest (R. 20). Specifically, Craig sought the suppression of the hand-

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[1] Apparently, Morrow believed that Craig had falsified his time card in an attempt to receive pay for overtime which she believed he had not worked. Craig denied that he had done anything wrong and attempted to explain that he had worked overtime for other supervisors during the time questioned.

gun found in his vehicle and the statements made at the police station shortly thereafter (R.20). Judge Brian Barnett Duff referred the matter to Magistrate Judge Rebecca R. Pallmeyer (R.28).

The magistrate judge recommended that Craig's motion to suppress evidence of the gun and his alleged post-arrest statements be denied (R.35; App. 41). The magistrate found that the officers had probable cause to arrest Craig based upon the information known to them (App. 32). The magistrate further found the existence of exigent circumstances to justify the warrantless arrest based upon (1) the officers' fear for their own safety and (2) the officer's belief that any delay in arrest could have enabled Craig to dispose of evidence (App. 38-39). Finally, the magistrate found that, assuming there was probable cause to arrest the defendant, the police would have had probable cause to obtain a search warrant which would have led to the inevitable discovery of the gun (App. 40).

The magistrate's recommendation was accepted by Judge Brian Barnett Duff, who denied the motion. The case was later transferred to Judge Marvin E. Aspen who presided over the trial.

D. The Seventh Circuit's Decision

On appeal, Craig argued that the District Court had erroneously determined that the arresting officers had probable cause to arrest him. Craig further argued the absence of any exigent circumstances which would justify the officers' warrantless entry into his garage to make the arrest.

The Seventh Circuit affirmed the district court's ruling, finding that the district court had correctly determined that the arresting officers had probable cause to arrest Craig and that exigent circumstances justified the officers'

warrantless entry into Craig's garage to make the arrest (App. 1-2). In addition, the Seventh Circuit held that even if the officers' warrantless entry into Craig's garage violated the Fourth Amendment, the district court properly allowed the evidence under the "inevitable discovery" exception to the exclusionary rule (App. 16-17).

REASONS FOR GRANTING THE WRIT

(1) Exigent Circumstances

The Seventh Circuit's finding of exigent circumstances to justify the warrantless arrest on these facts is a marked departure from other United States courts of appeals. It is well settled that "[c]ircumstances are not normally considered exigent where the suspects are unaware of police surveillance." *United States v. Tobin*, 923 F.2d 1506, 1511 (11th Cir. 1991), *cert. denied*, 112 S.Ct. 229, 116 L.Ed.2d 243 (1991). The considerations in such cases were discussed by the Ninth Circuit, which stated:

> Suspects who are inside their homes and unaware of their impending arrests generally have no reason immediately to flee, nor would they ordinarily have any reason immediately to destroy the fruits of their crime. Likewise, without more there is little reason for them to endanger the lives of themselves or others. Consequently, law enforcement officers confronting this type of situation can, without great difficulty, maintain surveillance of the premises and either wait to effectuate a valid public arrest when the suspects emerge or seek an arrest warrant from a neutral and detached magistrate.

United States v. Lynch, 934 F.2d 1226, 1232 (11th Cir. 1991), *cert. denied*, 112 S.Ct. 885, 116 L.Ed.2d 788 (1992),

citing *United States v. George*, 883 F.2d 1407, 1414-15 (9th Cir. 1989) (citations omitted).

Other United States courts of appeals have declined to find exigent circumstances justifying warrantless intrusions based upon officers' fear that their presence may be detected. *Lynch*; *George*. This is true even where the officers believe the suspect has committed a serious crime and may be armed and dangerous. In *George*, the Court stated:

> Undoubtedly the officers here reasonably believed that the nature of Appellant's crimes was indicative of his danger and, further, that he possessed evidence that he might destroy. But we cannot conclude on the record before us that the officers reasonably believed that Appellant either knew or was in substantial danger of learning of his imminent capture. Nor can we in good conscience conclude that . . . the officers here reasonably believed that even absent that knowledge immediate entry into Appellant's apartment was necessary to prevent him from either currently endangering lives or currently destroying evidence. . . . We believe instead that the officers could have conducted surveillance of the premises and either awaited Appellant's exit to effect a valid public arrest or, at minimum, make a good faith attempt to obtain an arrest warrant.

Id.

Contrary to the rulings of the Ninth Circuit in *George* and the Eleventh Circuit in *Lynch*, the Seventh Circuit here found exigent circumstances because "[t]he officers did not know that Craig was unaware that they were watching him." (App. 14) There is no evidence to suggest that Craig *had* become aware of the surveillance being

conducted. In fact, the United States itself contends that "[u]p until this point [when the officers announced that they were the police, and they ordered Craig to put his hands in the air and exit his vehicle], the defendant had not been aware of the officers' presence."

In light of these facts, the Seventh Circuit's holding is tantamount to a holding that the mere presence of officers performing surveillance creates exigent circumstances. The effect of the Seventh Circuit's decision is that officers can always enter a suspect's home rather than conducting surveillance and securing a warrant because the officers cannot be certain whether the suspect will become aware of their presence at some time before the warrant is obtained.

The Seventh Circuit's decision directly conflicts with the holdings of other United States courts of appeals under which exigent circumstances are created *only* when the suspect either knows or will learn imminently that he is in immediate danger of apprehension.

This case presents the Court with an opportunity to establish a clear, uniform standard on the issue of whether exigent circumstances exist where officers are surveilling a suspect who is unaware of their presence. Accordingly, the Court should grant *certiorari*.

(2) Probable Cause

In addition to finding exigent circumstances, the Seventh Circuit affirmed the district court's finding of probable cause, which can only be viewed as expanding the concept of probable cause beyond the recognized guidelines set forth and currently followed by federal courts. The facts known to the postal inspectors, as well as the inferences drawn by the inspectors from these facts, upon which the

district court found probable cause, *at best* constituted suspicion.[2] Probable cause for arrest requires more than bare suspicion. *United States v. Burrell*, 963 F.2d 976, 986 (7th Cir. 1992), *cert. denied*, 113 S.Ct. 357, 112 L.Ed.2d 270 (1992). The quantum of evidence required to establish probable cause to arrest requires more than "even a 'strong reason to suspect.' " *United States v. Fisher*, 702 F.2d 372, 374 (2d Cir. 1983), citing *Henry v. United States*, 361 U.S. 98, 101, 80 S.Ct. 168, 170, 4 L.Ed.2d 134 (1959); *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879 (1940).

The district court's finding of probable cause to arrest Craig was based upon an agreed submission of facts from the parties. The agreed submission contained only five facts relevant to the determination of probable cause:

1. Ms. Morrow was shot while she was in the postal facility (the "Facility");
2. She did not see who shot her;
3. She had a dispute about overtime with Mr. Craig several hours earlier;
4. Despite not having seen who shot her, she told the nurse to have a Mr. Melton "get" the "man we spoke about this morning (Mr. Craig)"; and
5. Mr. Craig had written a letter complaining about car burglaries at the Facility at some earlier time which some people felt was "strange."

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[2] The Seventh Circuit acknowledged that the relevant issue is what the postal inspectors knew at the time. "[O]nly if the postal inspectors had probable cause to arrest Craig was Craig's arrest by the Merrillville police lawful." (App. 7, fn.1)

The postal inspectors were advised that a shooting had taken place at the Facility. The inspectors knew that the Facility was undergoing construction, however, and that the usual limited access policy was not in place. Accordingly, although the inspectors suspected that the shooter was an employee of the Facility or someone familiar with its layout, they had insufficient knowledge to limit the pool of suspects to any particular group of persons, much less to one person—Craig—specifically. The shooter could have been an employee, a construction worker, or someone off the street who had gained access to the Facility because of the reduced security. The inspectors were advised that there had been no eyewitness to the shooting, that no one had been seen in the area from where the shot came, and that the victim herself did not know who had shot her.

Even if the limited access policy had been in effect, which it was not, the location of the shooting by itself is insufficient to establish probable cause. At most, the location would suggest a group of people—employees with access to the facility—not one specific employee. In determining whether probable cause exists to believe that a particular person has committed a given crime, the Supreme Court has indicated that information which suggests that any of a group of persons might have committed a crime but did not reasonably single out any one person from that group is insufficient to establish probable cause. *Wong Sun v. United States*, 371 U.S. 471, 481, 83 S.Ct. 407, 414 (1963); *Fisher*, 702 F.2d at 375.

The earlier confrontation even when considered with the location, is still insufficient to establish probable cause. With regard to the confrontation, the postal inspectors did not know who had confronted who, whether either party showed anger or threatened violence, or how the matter

had been resolved. Certainly the mere fact that a "confrontation" had taken place between Morrow and Craig did not give rise to anything more than mere suspicion.

The facts, as they were known to law enforcement personnel at the time of the defendant's arrest, did not constitute probable cause to arrest the defendant. They may be evaluated, at best, as casting suspicion on Craig.

The district court's finding of probable cause based upon the postal inspector's suspicions is a clear departure from the currently accepted standards of probable cause. In affirming the district court's finding of probable cause, the Seventh Circuit has sanctioned this departure. This case presents the Court with an opportunity to re-establish the uniformly accepted standards of probable cause. Accordingly, the Court should grant certiorari.

(3) Inevitable Discovery

Under the doctrine of inevitable discovery, as it is currently recognized by federal courts, the government must establish that the information ultimately or inevitably would have been discovered by lawful means. *Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). The government must show that it would have sought and obtained a proper search warrant, which naturally would have led to the discovery of the evidence. *United States v. Buchanan*, 910 F.2d 1571, 1573 (7th Cir. 1990).

The Seventh Circuit incorrectly assumes that because the officers had probable cause to arrest Craig, the officers had probable cause to search Craig's vehicle and his home. In fact, in order to obtain a search warrant, officers must show a connection between the item(s) being sought and the location to be searched.

There is no such connection between a gun used to commit a crime and the defendant's home. *United States v. Charest*, 602 F.2d 1015 (1st Cir. 1979). In *Charest*, the defendant, unlike here, was already known to have shot the victim when the authorities conducted a warrantless search of his home. Finding a warrant to search the defendant's home invalid, the court wrote:

> Common sense tells us that it is unlikely that a murderer would hide in his own home a gun used to shoot someone. If defendant shot [the victim], as the affidavit states, one of the first things he would do would be to get rid of the gun. The handgun could easily have been disposed of permanently within a short time after the crime. It is not reasonable to infer that defendant drove from Somerset to Fall River [Massachusetts] and then casually placed a weapon which had fired more than one bullet into a man on the shelf in his bedroom closet.

Id. at 1017. The Court in *Charest* further stated that it was "unable to find any case in which a search warrant was issued for a person's home on the sole basis that a handgun had been used by that person in the commission of the type of crime where the bullets could be traced to the gun." *Id.* The Court held that there was nothing in the affidavit from which a factual finding could be made that the gun used in the shooting was probably located at the defendant's home. *Id.*[3]

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[3] Although *Charest* has been distinguished by the Seventh Circuit in *United States v. Buchanan*, 910 F.2d 1571 (1990), the basis of that distinction does not apply here. In *Buchanan*, the Court found that it would be reasonable to search Buchanan's hotel room for a gun because he was a fugitive living in temporary quarters under a false name. Whereas, in *Charest*, and in this case, the place to be searched was the defendant's home where he had been living openly for a long time and where anyone looking for him would know to look. *Buchanan*, at 1574.

There is nothing contained within the warrant affidavit which would have been known other than as a result of the illegal search and seizure, which connects the gun used in the shooting to the defendant's car or his home. Indeed, unlike *Charest*, the defendant here was not even known to be the person who had done the shooting, but was only considered as a "possible suspect". Even assuming knowledge that Mr. Craig had committed the shooting, which officers did not have, he could have easily discarded the weapon during the long drive from the Facility to his home in Indiana. A neutral magistrate could not have found a "fair probability" that the gun would be located in the defendant's car or home. Based upon the above, the government could not have obtained a proper search warrant.

To qualify for admissibility under the inevitable discovery rules, "there must be a reasonable probability that the evidence in question would have been discovered by lawful means, and the prosecution must demonstrate that the lawful means which made discovery inevitable were possessed by the police and were being actively pursued prior to the occurrence of the illegal conduct." *United States v. Satterfield*, 743 F.2d 827, 846 (11th Cir. 1984), citing *United States v. Brookins*, 614 F.2d 1037, 1042 n. 8, 1048 (5th Cir. 1980).

At all times, the officers had access to radio communication and could have attempted to obtain a warrant to arrest the defendant or to conduct a search, but took absolutely no steps to do so. Instead, with the defendant unaware of their presence and despite easy access to a neutral magistrate, the officers chose to make a destructive and tumultuous, warrantless entry and arrest. Accordingly, the government is unable to demonstrate that the officers were pursuing lawful means, and therefore, cannot estab-

lish that the evidence obtained by unlawful methods fall within the doctrine of inevitable discovery.

Because the government could not have obtained a proper warrant and cannot begin to demonstrate that the officers were actively pursuing a warrant prior to the unlawful search and arrest, the evidence obtained by the officers is not admissible under the inevitable discovery doctrine. The district court's finding to the contrary and the Seventh Circuit's affirmation of this finding run contrary to the requirements set forth by federal courts prior to the admission of evidence under the inevitable discovery doctrine.

This case presents the Court with an opportunity to establish a clear, uniform standard on the issue of inevitable discovery. Accordingly, the Court should grant certiorari.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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